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Counsel for the Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	Chapter 7
)	
MGT CONSTRUCTION MANAGEMENT, INC.,)	Case No. 18-30835-KRH
Debtor.)	

**TRUSTEE'S MOTION FOR AUTHORITY TO SELL MISCELLANEOUS ASSETS
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES
WITHOUT FURTHER COURT APPROVAL**

Harry Shaia, Jr., Trustee, by counsel, hereby moves this Court for entry of an order, pursuant to 11 U.S.C. §§ 105(a) and 363, authorizing the Trustee, without further approval of this Court, to sell miscellaneous estate assets of limited value (\$25,000.00 or less) free and clear of liens, claims and encumbrances. In support of his motion, the Trustee states:

JURISDICTION AND BACKGROUND

1. The Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Sections 105(a) and 363 of the Bankruptcy Code.

2. This case was commenced on February 22, 2018, when the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

3. The Trustee was appointed interim trustee and continues to serve as trustee in this case.

RELIEF REQUESTED

4. The Trustee is in the possession of, or controls, certain estate property of modest value which he seeks to liquidate or abandon ("Miscellaneous Assets or Assets").

5. The Miscellaneous Assets, each valued at \$25,000.00 or less, include vehicles, trailers, electronics and other equipment and supplies that the Debtor used in connection with its prior business operations. Exhibit A to this motion is a list and/or general description of the Assets. The Assets are currently in storage and/or the hands of third parties, for which the estate is incurring storage and other expenses.

6. Sales pursuant to this Motion will be relatively small in comparison to the scope of the total claims against the Debtor. Nevertheless, they would be outside the ordinary course of the Debtor's business, requiring Court approval pursuant to 11 U.S.C. § 363(b)(1).

7. Hartford Fire Insurance Company has asserted a security interest in all the Debtor's assets to secure a claim in the amount of \$68,796,177. There is a bona fide dispute between Hartford and the Trustee over the secured nature and amount of Hartford's claim. The Trustee is unaware of any other party with an interest in the Assets.

In light of the asserted lien, the Trustee seeks authority under 11 U.S.C. § 363(f) to sell the Miscellaneous Assets free and clear of liens, claims and encumbrances.

8. Due to the administrative burden on the Court and the expense associated with the notice requirements for § 363 motions, especially when viewed in the context of the relative size of each transaction, the *de minimus* value of some of the Assets, and the likelihood that the Assets will sell to different purchasers over a period of time, the Trustee believes it to be in the best interests of the estate to be granted authority to use his business judgment to sell or abandon the Assets without further approval of this Court for each specific sale.

9. All sales of the Assets will be “as is” and “where is,” without any representation or warranties from the Trustee as to the quality or fitness of such assets for either their intended or any particular purposes.

BASIS FOR RELIEF

10. Section 363(b)(1) of the Bankruptcy Code provides: “The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Section 105(a) of the Bankruptcy Code provides in relevant part: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

11. A sale of assets of a debtor should be authorized pursuant to section 363 of the Code if a sound business purpose exists for doing so. *See,*

e.g., *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d. Cir. 1983). In this case, in light of the administrative burden and expense compared with the expected realization, the Trustee submits that adequate business justification exists to merit a judicial grant of general authority to sell certain assets, rather than requiring approval of each sale prior to consummation of the transaction.

12. Bankruptcy Rule 2002(a)(2) requires that notice of a sales motion be provided at least twenty-one days prior to the proposed use, “unless the court for cause shown shortens time or directs another method of giving notice.” Fed. R. Bankr. P. 2002(a)(2)(emphasis added); *see also*, Fed. R. Bankr. P. 9006(c). These notice and hearing requirements of Section 363(b)(1) are met if the notice and opportunity for hearing that are given are appropriate in the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining “after notice and a hearing”).

13. When determining whether notice is appropriate under the circumstances for purposes of Section 102(1)(A) of the Bankruptcy Code, it is “guided by fundamental notions of procedural due process.” *In re Lomas Fin. Corp.*, 212 B.R. 46, 54 (Bankr. D. Del. 1997). Due process “requires that any notice is ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *In re Grand Union Co.*, 204 B.R. 864, 871 (Bankr. D. Del. 1997).

14. Moreover, sales outside the ordinary course of business may be authorized without an actual hearing if no party in interest timely requests an actual hearing. 11 U.S.C. § 102(1)(B)(i).

15. As due process is satisfied if parties are given “an opportunity to present their objections,” *Mullane*, 339 U.S. at 314, the Trustee believes that the notice and hearing on this motion should satisfy the due process requirements for the sale of Assets by providing interested parties with ample opportunity to present objections to the proposed grant of authority.

WHEREFORE, the Trustee respectfully requests that the Court enter the Order substantially in the form attached hereto as Exhibit B, authorizing the Trustee to sell the Miscellaneous Assets free and clear of liens, claims and encumbrances, without further court approval, and grant such other and further relief as the Court deems just and proper.

Dated: Richmond, Virginia

September 11, 2018

HARRY SHAIA, JR., TRUSTEE

By: /s/ Kimberly A. Taylor
Counsel

William A. Broschious, VSB #27436
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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2018, a true and correct copy of the foregoing was served on all persons receiving electronic notice in these cases, and on each of the following by the first-class mail:

Office of the U.S. Trustee: Robert B. Van Arsdale, Esquire
Shannon Pecoraro, Esquire
OFFICE OF THE U. S. TRUSTEE
701 East Broad Street - Suite 4304
Richmond, Virginia 23219

Debtor: MGT Construction Management, Inc.
c/o P. Michael Kain
Anderson Bauman Tourtellot Vos
11931 Smoketree Drive
Richmond, Virginia 23236

Counsel for the Debtor: David K. Spiro, Esquire
Spiro & Browne, PLC
6802 Paragon Place
Suite 410
Richmond, Virginia 23230

Counsel for Hartford: Charles L. Williams, Esquire
Williams & Skilling, P.C.
4801 Radford Avenue, Suite A
Richmond, Virginia 23230

/s/ Kimberly A Taylor
Counsel

EXHIBIT A

Attachement II

Computer & Laptops				
Serial Number	Model	Description	Location/User	Value
CND5387R4L	HP 250 G4 Laptop	MGTDIANE	Thalhimer Cage - was Diane	75
2UAS0517KL	HP Elitedesk 800 G1 PC	LOGANSR	Thalhimer Cage - was Logan SR Desk	175
SCG517413D	HP EliteBook 850 G1 Laptop	LOGANH	Mike Logan JR - not returned	225
CND44588SP	HP Probook 450 G2	MGTCC118	MGT INV Room	87
SCG53433VZ	HP 350 G2	MGTCC127	MGT INV Room	75
NXV91AA0043440F3D06600	ACER P245	n/a	MGT INV Room	35
SCG425FHLW	HP 350 G1	MGTCC143	MGT INV Room	35
CND5399RNO	HP Probook 450 G2	MGTCC132	MGT INV Room	125
CNU4048SSD	HP Probook 6470b	MGTCC148	MGT INV Room	75
5CB2442H4B	HP Probook 6560b	n/a	MGT INV Room	25
SCG51740JZ	HP EliteBook 850 G1	SEAMAR	Sean Martin - not returned	225
2UA4120168	HP Elitedesk 800 G1 PC	PATLIN14	Thalhimer Warehouse Cage - keep	100
SCD6045TCB	HP Probook 450 G3	MGTCC144	MGT INV Room	361
CND445DM88	HP Probook 450 G2	MGTCC114	MGT INV Room	87
2UA2371NXX	HP Elite 8300 SFF	DEBHAR	MGT INV Room	20
2UA3511ZQT	HP Prodesk 600 G1	John Pierce	MGT INV Room	30
2UA5382GQM	HP Elitedesk 800 G1 PC	MGTCC130	MGT INV Room	150
2UA13B1RQT	HP Elite 8100 SFF	n/a	MGT INV Room	20
MXL1292BP2	HP Elite 8100 SFF	n/a	MGT INV Room	20
2UA1451HDQ	HP Pro 6200 SFF	n/a	MGT INV Room	20
2UA6090Z93	HP Prodesk 600 G2	MGTCC147	Thalhimer Cage	346
5CB3410LBN	HP Probook 6570b	Brander	MGT INV Room	20
2UA2070X1L	HP Pro 6200 SFF	DEVROE	Thalhimer Cage	20
CND5399RP5	HP Probook 450 G2	MGTCC129	MGT INV Room	125
MXL0481CDH	HP Pro 3130	NORMMILL	MGT INV Room	5
MXL54551PM7	HP Probook 640 G1	MGTCC145	MGT INV Room	100

Monitors/Displays				
Serial Number	Model		Location/User	
MMLRRAA0022490792C4237	Acer V223WL		MGT INV Room	20
MMLRRAA002249079394237	Acer V223WL		MGT INV Room	20
U2W145200745	Viewsonic VA2855SMH		MGT INV Room	70
U2W145200746	Viewsonic VA2855SMH		MGT INV Room	70
MMLRRAA0022490793R4237	Acer V223WL		MGT INV Room	20
TEQ140221672	Viewsonic VA2037M-LED		MGT INV Room	20
MMLRRAA002249079204237	Acer V223WL		MGT INV Room	20
MMLRRAA002237029994237	Acer V223WL		MGT INV Room	20
MMLRRAA0022450C1504297	Acer V223WL		MGT INV Room	20
MMLRRAA002237056A84237	Acer V223WL		MGT INV Room	20
TST153920828	Viewsonic VA2446M-LED		MGT INV Room	35
TST153920821	Viewsonic VA2446M-LED		MGT INV Room	35
TSP153284748	Viewsonic VA2246M-LED		MGT INV Room	25
TST144321017	Viewsonic VA2446M-LED		MGT INV Room	35
TST152422441	Viewsonic VA2446M-LED		MGT INV Room	35
SDD122941864	Viewsonic VA2248M-LED		MGT INV Room	30
TST152422448	Viewsonic VA2446M-LED		MGT INV Room	25
TEQ140221667	Viewsonic VA2037M-LED		MGT INV Room	10
TSP1546C8023	Viewsonic VA2246M-LED		MGT INV Room	25
TSP134112668	Viewsonic VA2246M-LED		MGT INV Room	25
TEQ140222605	Viewsonic VA2037M-LED		MGT INV Room	10
MMLRRAA002249079324237	Acer V223WL		MGT INV Room	20
MMLRRAA002249079384237	Acer V223WL		MGT INV Room	20
TSP1444A2866	Viewsonic VA2246M-LED		MGT INV Room	25
TSP132404508	Viewsonic VA2246M-LED		MGT INV Room	25
T6X143381409	Viewsonic VA2212M-LED		MGT INV Room	25
3 additional old monitors			MGT INV Room	15

Printers and Scanners

Serial Number	Model	Location/User	
CNDG155540	HP Laserjet Pro 400 Color	MGT INV Room	125
CN27N850V7	HP Officejet Pro 8100	MGT INV Room	75
ASC0011022499	Konica bizhub C554e	2nd Floor - former MGTOC office	
U62710L2N409746	Brother HL-22	MGT INV Room	35
VN83M41222	HP Laserjet P1102w	MGT INV Room	60
VN83436387	HP P2035	MGT INV Room	75
VND3Q32205	HP Laserjet P1102w	MGT INV Room	60
VN83449855	HP Laserjet P2035	MGT INV Room	75
AQVB416431	Scansnap IX500	MGT INV Room	117
13096995 Service Tag	Ricoh MPC3503	1st Floor - former MGTOC office	
VN83D45113	HP Laserjet P1606dn	MGT INV Room	75
CN4BT5920V	HP Officejet 4630	MGT INV Room	65
VN83H81034	HP LaserJet 4022	MGT INV Room	10

Other Items

Serial Number	Model	Description	Location/User	
141900252057		Pantech USB Modem	MGT INV ROOM	15
131200111025		Pantech USB Modem	MGT INV ROOM	15
		iPhone 5C	MGT INV ROOM	25
CN2208J1V2		HP 1410-8G Switch	MGT INV ROOM	10
CN0092F0MV		HP Procurve	MGT INV ROOM	25
	SV411	Starview 4 Port KVM	MGT INV ROOM	10
		iPad 2nd or 3rd Gen (dead in Otis	MGT INV ROOM	25
	SCS-2U01	Samsung Verizon Network Boost	MGT INV ROOM	40
6802541FL		NEC Projector VT676	MGT INV ROOM	50
NE5F131007L	H369A	Epson Projector	MGT INV ROOM	50
STE840A0879199HX	KE-8000MX	AVS Elite Security Camera DVR ce	MGT INV ROOM	50
	UNG516200	Samsung TV	MGT INV ROOM	300
LC46LE540U		Sharp TV	Charlotte - Hawthorne	100
CND8DDV6QG		HP Laserjet Pro	Charlotte - Hawthorne	150
	990004091935498 not returned	iPad Retina 16GB	Henry Miza	50
	355783070172270 not returned	iPhone 6 16GB	Brander Bunnell	100
	990003084217062 not returned	iPad Retina 16GB	Brander Bunnell	50
	990001263789901 not returned	iPad 4G 16GB	Bruce Ely	100
	35697006957210 not returned	iPad Air 2 16GB	Mike Logan	200
	355418076454470 not returned	iPhone 6s 16GB	Mike Logan	50
	35563807360758 not returned	Samsung Convoy 4	Roland Shelton	10
	355399086435226 not returned	iPhone 6s 32GB	Sean Martin	50
	35541207754700 not returned	iPhone 6s Plus	Henry Miza	50
	357013073193290 not returned	iPhone 6 16G	Josh Crissman	50
	990003304420100 not returned	VZ Jetpack	Mike Logan, Jr.	20
	353329076566990 not returned	iPhone 6s Plus 64GB	Mike Logan, Jr.	50
	356961062349340 not returned	iPhone 5s	Mark Nolan	50
	990006351117800 not returned	Modem	Brander Bunnell	20
	990006351749460 not returned	Modem	Henry Miza	20
	352072073805359 not returned	iPad Air 2 16GB	Linsey Forrest	200
		iPhone 6	MGT INV ROOM	50
		iPhone 5c	MGT INV ROOM	25
		iPhone 5s	MGT INV ROOM	50
		iPhone 5s	MGT INV ROOM	50
		(12) ml-IT's	MGT INV ROOM	200
		iPhone 5s	MGT INV ROOM	50
		iPhone 5	MGT INV ROOM	25
		iPhone 5c	MGT INV ROOM	25
		iPhone 5c	MGT INV ROOM	25
		iPhone 5c	MGT INV ROOM	25
		iPhone 5s 32GB	MGT INV ROOM	50
		iPad air 16GB	MGT INV ROOM	200
		Apple iPad Air 16GB	MGT INV ROOM	200
		Apple iPad Air 2 16GB	MGT INV ROOM	200
		iPad air 16GB	MGT INV ROOM	200

Grand Total

7383

Attachment to Schedule B 77

Items in Warehouse

Two boxes of caulk
Eight 5 gallon bucket of paint
To empty panels
One microwave
Two boxes Simpson ties
10 boxes Simpson hold downs
One box exhaust fan cover
Six bags mortar
Four boxes of quarry tile
Miscellaneous backsplash tile
Three boxes miss matched door hardware
22 tubes construction adhesive
Seven miss matched sidewalk and road signs
21 roles of Styrofoam sill seal foam gasket One box miscellaneous electrical
boxes Six boxes millennial tile Three 8 inch door frames Approximately five
welded frames Approximately 200 ft.² photo paver material Three American
standard bathroom sinks
17 Siegel lighting six pack
Two site fans
8 packs sylvania tube lights
Two boxes bamboo flooring
Four boxes 2 x 4 ceiling tile
Four boxes 2 x 2 ceiling tile
Five boxes mismatch corner bead and zip
One box drywall tape
One trash cart
Miscellaneous scaffold
Nine prehung doors
Three hollow metal side light frames
12 Bondald hollow metal knockdown frames
12 solid core flush wood doors
12 boxes of cabinets – vanities and Base
20 boxes 6 inch base cabinet filler
One bundle or one insulation
Two fold

Trucks:

2014 Chevy Silverado

2006 Ford F-550

2014 Chevy pickup truck

EXHIBIT B

William A. Broschious, VSB #27436
Kimberly A. Taylor, VSB #29823
Kepley Broschious & Biggs, PLC
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Counsel for the Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	Chapter 7
)	
MGT CONSTRUCTION MANAGEMENT, INC.)	Case No. 18-30835-KRH
Debtor.)	

**ORDER AUTHORIZING TRUSTEE TO SELL MISCELLANEOUS ASSETS
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES
WITHOUT FURTHER COURT APPROVAL**

Upon the motion of Harry Shaia, Jr., Trustee in the bankruptcy case of MGT Construction Management, Inc., for an order pursuant 11 U.S.C. §§ 105(a) and 363, authorizing the Trustee, without further approval of this Court, to sell miscellaneous estate assets of limited value (\$25,000.00 or less) free and clear of liens, claims and encumbrances ("**Miscellaneous Assets**") the Court finds that: (a) it has jurisdiction to consider the motion pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) proper and adequate notice of the motion and the hearing thereon has been given and no other or further notice is necessary; (d) there have been no objections to the motion; and (e) upon the record herein, and after due

deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein; therefore, it is hereby ORDERED that:

1. The motion and the relief requested therein is GRANTED;
2. The Trustee is authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to sell the Miscellaneous Assets without further order of this Court, and to take any and all action necessary, appropriate or advisable to complete such sales;
3. Pursuant to Bankruptcy Code section 363(f) any and all sales of the Miscellaneous Assets shall be free and clear any and all valid liens, claims and other encumbrances;
4. This Order shall be effective immediately upon entry.

Done in Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

Dated: _____, 2018

I ASK FOR THIS:

/s/

William A. Broschious, VSB #27436
Kimberly Ann Taylor, VSB #29823
Counsel for the Trustee
Kepley Broschious & Biggs, PLC
2211 Pump Road
Richmond, VA 23233
Phone: (757) 636-9826
Fax: (804) 741-6175
ktaylor@kbbplc.com

**CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

I hereby certify that the foregoing proposed Order has been endorsed by or served upon all necessary parties.

/s/ Kimberly A. Taylor
Counsel

SERVICE LIST:

Counsel to the Trustee:

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Kimberly A. Taylor, Esquire
Kepley Broschious & Biggs, PLC
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Office of the U.S. Trustee:

Robert B. Van Arsdale, Esquire
Shannon Pecoraro, Esquire
OFFICE OF THE U. S. TRUSTEE
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Richmond, Virginia 23219

Debtor:

MGT Construction Management, Inc.
c/o P. Michael Kain
Anderson Bauman Tourtellot Vos
11931 Smoketree Drive
Richmond, Virginia 23236

Counsel for the Debtor:

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Counsel for Hartford:

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Williams & Skilling, P.C.
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